

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

)
) MDL No. 1456
) Master File No. 1:01-CV-12257-PBS
) Sub-Category Case No. 1:08-CV-11200
)

THIS DOCUMENT RELATES TO:

*United States ex rel. Linnette Sun and
Greg Hamilton, Relators*

)
) Judge Patti B. Saris
)

v.

Baxter Healthcare Corporation

BAXTER HEALTHCARE CORPORATION'S PARTIAL MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(1), defendant Baxter Healthcare Corporation ("Baxter"), by and through its attorneys, respectfully requests that the Court dismiss with prejudice that portion of Count I of Relators' Second Amended Complaint for Damages Under the Federal and Various State False Claims Acts (dated August 13, 2010) in so far as it makes claims relating to the Baxter hemophilia therapy Recombinate. As demonstrated in the attached Memorandum in Support of Baxter's Partial Motion to Dismiss, the Court lacks jurisdiction over any claims relating to Recombinate pursuant to 31 U.S.C. §3730(b)(5), the False Claims Act's so-called "first-to-file" bar. For related reasons, Baxter requests that the Court dismiss Relator Hamilton from this case.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Baxter believes oral argument may assist the court in resolving these issues and therefore requests a hearing at such time as the court determines.

A proposed order is attached for the Court's convenience.

Dated: July 29, 2011

Respectfully submitted,

/s/ Shamir Patel

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that the moving party has communicated with counsel for Relators in an effort to resolve the dispute referred to in this Motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Shamir Patel

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CERTIFICATE OF SERVICE

I hereby certify that I, Shamir Patel, an attorney, electronically filed the foregoing BAXTER HEALTHCARE CORPORATION'S PARTIAL MOTION TO DISMISS RELATORS' COMPLAINT with the Clerk of the Court for the District of Massachusetts using the Court's CM/ECF system on July 29, 2011. I also caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service via LexisNexis File & Serve, for posting and notification to all parties.

/s/ Shamir Patel

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